

1 *Direct Purchaser Plaintiffs*
2 *Interim Co-Lead Class Counsel*

3 *Indirect Purchaser Plaintiffs*
4 *Interim Co-Lead Class Counsel*

5 [All Counsel Identified on Signature Page]

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IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION

This Document Relates to:

All Direct and Indirect Purchaser Actions

CASE NO. 13-MD-2420-YGR

MDL No. 2420

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: October 2, 2015

Time: 9:30 a.m.

Judge: Hon. Yvonne Gonzalez Rogers

Location: Courtroom 1, 4th Floor

1 Pursuant to the Court's August 26, 2015 Order Setting Status Conference (ECF No. 816),
2 counsel for Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs (collectively, "Class
3 Plaintiffs") and Defendants¹ respectfully submit this Joint Statement in advance of the Case
4 Management Conference scheduled for October 2, 2015 at 9:30 a.m. Because the Court is familiar
5 with the factual allegations, legal issues, and procedural posture of this case, this Joint Statement
6 focuses on those topics that one or more parties believe are necessary to advance the litigation.

7 The principal matter at issue is the schedule. Despite the good faith and diligence of both
8 sides, Class Plaintiffs have not yet advanced their analyses of Defendants' transactional sales and
9 cost data (and other discovery) to the point where they believe they can file class certification
10 motions on November 30, 2015. Likewise, given the significant amount of data, the still unknown
11 number of potential products and class members in each case, and the need for substantial
12 deposition and expert discovery in response to Class Plaintiffs' certification motions, Defendants
13 estimate that they will require additional time to oppose the motions once they are filed. The
14 parties have met and conferred and mutually request that the deadline to file class certification
15 motions be extended by 46 days to January 15, 2016 and that the deadline for oppositions be
16 extended by 76 days to May 24, 2016 (with the reply deadline also to be extended 76 days to
17 August 22, 2016, leaving the amount of time on reply unchanged). The reasons for this joint
18 request are set forth below, in addition to certain other matters.

19 **I. WORK PERFORMED IN THE CASE TO DATE**

20 Since the last Case Management Conference on October 30, 2014, the parties have been
21 working diligently to advance this litigation. Class Plaintiffs have pursued discovery, to which
22 Defendants have responded and produced documents, in the following areas: transactional data,
23 written discovery, discovery motions, custodian negotiations, search term negotiations, document

24 ¹ Defendants include Panasonic Corporation and Panasonic Corporation of North America
25 (collectively, "Panasonic"); SANYO Electric Co., Ltd. and SANYO North America Corporation
26 (collectively, "Sanyo"); Sony Corporation, Sony Energy Device Corporation, Sony Electronics
27 Inc. (collectively, "Sony"); Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively,
28 "Hitachi Maxell"); LG Chem, Ltd. and LG Chem America, Inc. (collectively "LG Chem");
Samsung SDI Co., Ltd and Samsung SDI America, Inc. (collectively, "SDI"); Toshiba
Corporation ("Toshiba"); NEC Corporation, and NEC TOKIN Corporation.

1 review and production, and depositions. Defendants also have propounded written discovery, to
2 which Class Plaintiffs have responded and produced documents, except for those Indirect
3 Purchaser Plaintiffs who are seeking to withdraw their representation and are the subject of a
4 discovery motion discussed below. Meet and confers with respect to some of the parties'
5 discovery responses are ongoing.

6 **A. Transactional Data**

7 Class Plaintiffs served requests for production of Defendants' transactional data on August
8 1, 2014. On November 14, 2014, Magistrate Judge Ryu ordered Defendants to complete their
9 productions of sales and cost data for lithium ion battery cells and packs by February 27, 2015 and
10 to complete their productions of sales data for lithium ion battery finished products and capacity
11 and utilization data for lithium ion battery cells and packs by April 30, 2015. *See* Order on Joint
12 Discovery Letter Re Deposition Protocol and Joint Discovery Status Report, ECF No. 555.
13 Defendants produced approximately 2,500 files of transactional data comprised of a multitude of
14 different and varied fields from 60 different databases. Some datasets were produced in whole or
15 in part in Japanese or Korean, necessitating translation.

16 Since Defendants produced their data, Class Plaintiffs' experts have undertaken the time-
17 consuming process of analyzing and structuring the data so that they can make inter-Defendant
18 comparisons. As is common in complex antitrust cases, Class Plaintiffs and Defendants have
19 worked together at length to understand the intricacies of the data. These analyses have been
20 complicated by a number of factors: a large amount of the data are in foreign languages; company
21 personnel who understand the data frequently do not speak English and are located halfway across
22 the world; and certain data are from archived systems as to which there may be nobody at the
23 company left who understands the intricacies of the database or system. Furthermore, the dataset
24 here is among one of the largest produced in an electronics component case venued in the
25 Northern District, due to the multiplicity of products containing lithium ion batteries.

26 Class Plaintiffs sent detailed letter questionnaires to each Defendant beginning as early as
27 February 25, 2015, with follow-up letters continuing through September 15, 2015. Class Plaintiffs
28 agreed that they would not seek 30(b)(6) testimony on topics relating to Defendants' transactional

data if Defendants provided sufficient responses to the questionnaires. Each Defendant has provided some level of response, frequently running to tens of pages. In addition, Defendants have produced hundreds of documents useful for deciphering the sales data, including data dictionaries, product number decoders, and product specification sheets. Many Defendants are still investigating certain of Class Plaintiffs' questions.

Defendant	Class Plaintiffs' Letters	Defendant Responses	Notes
Hitachi Maxell	3/18/2015	7/24/2015	Answers to certain questions require follow-up; investigation is continuing.
	8/18/2015	9/11/2015; 9/21/2015	Class Plaintiffs are evaluating September 11 and 21, 2015 responses for completeness.
LG Chem	4/21/2015	7/30/2015; 8/25/2015; 8/28/2015; 9/2/2015	Answers to certain questions require follow-up; investigation is continuing.
NEC Corp.	6/3/2015	8/12/2015	Answers to certain questions require follow-up; investigation is continuing.
	8/14/2015		Responses forthcoming September 29, 2015.
NEC TOKIN	6/3/2015	8/7/2015	Answers to certain questions require follow-up; investigation is continuing.
	8/14/2015		Responses forthcoming September 29, 2015.
Panasonic	3/17/2015	5/27/2015; 9/4/2015	Complete.
	6/15/2015	9/21/2015	Answers to certain questions require follow-up; investigation is continuing.
	8/24/2015		Responses forthcoming.
Sanyo	3/19/2015	7/23/2015; 9/4/2015	Complete.
	6/15/2015	9/21/2015	Answers to certain questions require follow-up; investigation is continuing.
	8/24/2015		Responses forthcoming.

Defendant	Class Plaintiffs' Letters	Defendant Responses	Notes
SDI	3/24/2015	7/31/2015	Complete.
	3/31/2015	7/31/2015; 8/24/2015; 8/28/2015	Complete.
	8/24/2015		Responses forthcoming.
Sony	2/25/2015	4/7/2015	Complete.
	5/3/2015	9/8/2015; 9/24/2015	Substantially complete; answers to certain questions require follow-up.
	7/21/2015	9/8/2015; 9/24/2015	Substantially complete; answers to certain questions require follow-up.
	9/9/2015	9/24/2015	Substantially complete; answers to certain questions require follow-up.
Toshiba	3/31/2015	7/2/2015	Complete.
	8/3/2015		Responses forthcoming.
	9/15/2015		Responses forthcoming.

Class Plaintiffs would like to conclude this process so their experts are able to analyze the data and prepare their reports in support of Class Plaintiffs' motions for class certification.

B. Written Discovery

Since the last Case Management Conference, Class Plaintiffs served two sets of interrogatories and two sets of requests for production of documents on all Defendants, as well as several interrogatories and requests for production on certain individual Defendants. The parties engaged in extensive meet and confers throughout the spring that resulted in Defendants' agreements to produce certain documents and to provide, in some instances, supplemental written responses to interrogatories. The most recent set of supplemental interrogatory responses was served on August 31, 2015, and another set is expected to be served by September 25, 2015.

C. Discovery Motions

The parties have pursued the following discovery disputes:

CLASS PLAINTIFFS' MOTION	DISPOSITION
Motion to Compel Defendants' Production of Worldwide Transaction-Level Sales and Cost Data, ECF No. 590 (Dec. 2, 2014)	Order granting in part and denying in part, ECF No. 624 (Dec. 23, 2014)
Motion for Resolution of Disputed Provision of Search Term Protocol, ECF No. 633 (Jan. 16, 2015)	Guidance provided by Court during hearing (Feb. 19, 2015)
Motion to Compel LG Chem Regarding the Sufficiency of its Interrogatory Response, ECF No. 644 (Feb. 6, 2015)	Order granting in part and denying in part, ECF No. 689 (Mar. 17, 2015)
Motion to Compel Toshiba's Response to Interrogatories, ECF No. 650 (Feb. 13, 2015)	Order granting, ECF No. 690 (Mar. 17, 2015)
Motion to Compel Toshiba to Produce Worldwide Transaction-Level Sales Data, ECF No. 677 (Mar. 11, 2015)	Order granting, ECF No. 710 (Apr. 1, 2015)
Motion to Compel LG Chem to Supplement its Interrogatory Response, ECF No. 745 (July 24, 2015)	Order granting, ECF No. 805 (Aug. 21, 2015)
Motion to Continue Deposition of Toshiba's Hiroshi Kubo, ECF No. 803 (Aug. 20, 2015)	Order granting, ECF No. 822 (Aug. 31, 2015)
Motion to Compel Deposition of LG Chem's Seok Hwan Kwak, ECF No. 764 (Aug. 7, 2015)	Order granting, ECF No. 836 (Sep. 15, 2015)

Defendants recently moved to compel Class Plaintiffs to supplement their response to an interrogatory concerning the identification of the finished products in the classes for which Class Plaintiffs will seek certification, ECF No. 825 (Sep. 9, 2015). Magistrate Judge Ryu is scheduled to hear that motion on October 15, 2015, ECF No. 831. In their discovery motion, Defendants contend, among other things, that identifying the scope of the finished products in the classes now will avoid having to prepare and defend against claims that may never be made, including analyzing data for the finished products at issue and taking discovery of nonparty packers, integrators, manufacturers and retailers of batteries and finished products that may not be at issue in the class certification motions. Class Plaintiffs contend that, due to the ongoing nature of the data analyses, they have not yet determined whether they will narrow the proposed classes and that

1 the schedule (especially if modified) provides sufficient time to oppose the class certification
2 motions after they are filed.

3 On September 22, 2015, Defendants moved to compel responses to nineteen
4 interrogatories and twenty-six requests for production of documents from fifteen Indirect
5 Purchaser Plaintiff putative class representatives who have asserted that they will be withdrawing
6 from the litigation. ECF No. 845. In that motion, Defendants request that the Court compel
7 fifteen putative class representatives that the Indirect Purchaser Plaintiffs seek to withdraw to
8 provide substantive discovery responses and appear for deposition. Indirect Purchaser Plaintiffs
9 oppose Defendants' motion.

10 **D. Custodian Negotiations**

11 On December 3, 2014, Magistrate Judge Ryu entered the Stipulation and Order re
12 Discovery Plans, ECF No. 592, which established a process for the parties to meet and confer over
13 initial document custodians. During the subsequent six weeks, the parties exchanged information
14 and undertook extensive negotiations concerning document custodians. The parties reached
15 agreements and then established a schedule for Defendants' productions of documents and ESI
16 from certain centralized files and nearly 250 custodians. The parties generally agreed that
17 Defendants would produce documents and ESI from custodians in three tranches—the first two
18 occurring prior to Class Plaintiffs' filing their motions for class certification, and the third
19 occurring after the motions are filed. *See* Stipulation and Order Regarding Defendants' Document
20 Productions, ECF No. 678 (Mar. 12, 2015).

21 **E. Search Term Negotiations**

22 On March 12, 2015, Magistrate Judge Ryu entered the Search Term Protocol, ECF No.
23 679. The parties then embarked on a months-long course of extensive search term negotiations.
24 These negotiations involved the construction and testing of complex search strings over multiple
25 document review platforms, first in English and later in Japanese and Korean. While some search
26 strings were common across Defendants, numerous strings were tailored to the unique
27 circumstances of the individual parties. Defendants produced documents and ESI on a rolling
28 basis throughout the spring and summer of 2015, as the parties agreed on specific search strings.

1 The parties finalized their agreements on the remaining foreign language search strings in
2 September 2015, and, as a result, Defendants' document productions from certain centralized files
3 and the first two tranches of custodians are continuing.

4 **F. Document Review and Production**

5 Defendants began producing documents and ESI in response to Class Plaintiffs' requests
6 for production in May 2015. Defendants have produced to date more than 1,400,000 documents,
7 comprising more than 4,500,000 pages and 1.8 terabytes of data. Defendants' productions are in
8 English, Japanese, Korean, and Chinese. Nearly 40 percent of the documents produced to date
9 are, at least in part, in a foreign language. Class Plaintiffs have been reviewing documents in
10 preparation for depositions and their motions for class certification. As mentioned above,
11 document productions, including those in foreign language, are continuing. Documents and ESI
12 from approximately 40 additional custodians will be produced in February 2016.

13 **G. Depositions**

14 In August and September 2015, Class Plaintiffs deposed two percipient witnesses from
15 Toshiba. Class Plaintiffs are preparing to depose at least 10 other percipient witnesses from
16 Defendants LG Chem, Sanyo, Panasonic, NEC Corporation, Sony, Toshiba, and Hitachi Maxell in
17 October and November 2015. Class Plaintiffs have requested that Defendants complete their
18 production of documents for most of these witnesses several weeks in advance to ensure Class
19 Plaintiffs can review the documents, most of which are likely to be in a foreign language, and to
20 obtain the necessary certified translations of those documents for use in the deposition. Class
21 Plaintiffs also intend to take Rule 30(b)(6) depositions of several Defendants. On August 6, 2015,
22 Class Plaintiffs identified twenty-five 30(b)(6) topics. The parties are meeting and conferring to
23 narrow these topics and to identify witnesses, and dates of the depositions.

24 **H. Discovery Directed to Class Plaintiffs**

25 On March 20, 2015, Defendants served their initial sets of requests for production of
26 documents and interrogatories on Class Plaintiffs. As mentioned above, Defendants collectively
27 served an additional interrogatory concerning the products within the classes that Class Plaintiffs
28 propose to certify, and Toshiba served discovery concerning its motion for summary judgment.

1 Class Plaintiffs served objections and responses to this written discovery. The parties met
2 and conferred over the discovery requests, and Direct Purchaser Plaintiffs and Defendants
3 discussed search terms for responsive ESI. Class Plaintiffs have produced documents and ESI in
4 response to Defendants' requests, except for those Indirect Purchaser Plaintiffs who are seeking to
5 withdraw and are the subject of a discovery motion discussed herein. In addition, the bankruptcy
6 trustee for Circuit City has offered to make available for inspection and copying over 500 boxes of
7 paper documents that are believed to contain discoverable information. The parties continue to
8 meet and confer over certain requests and Class Plaintiffs' responses thereto.

9 Defendants have sought to depose three Indirect Purchaser putative class representatives in
10 October 2015 and are awaiting Class Plaintiffs' response as to available dates for these
11 depositions. Defendants will depose other Direct and Indirect Purchaser putative class
12 representatives both before and after the motions for class certification are filed. In that regard,
13 Defendants have moved the Court to compel the depositions of fifteen putative class
14 representatives that the Indirect Purchaser Plaintiffs now seek to withdraw. As mentioned above,
15 Defendants' and Indirect Purchaser Plaintiffs' respective positions on this issue are stated in a
16 joint letter brief filed on September 22, 2015. *See* ECF No. 845. On the same date, Indirect
17 Purchaser Plaintiffs filed a motion to remove fifteen named Plaintiffs for four reasons: (1) after
18 continued investigation, it has been determined that they have no qualifying purchases within the
19 relevant period; (2) after continued investigation, it has been determined that they do not have
20 documentation relating to their purchase and/or do not have the product they purchased; (3) they
21 or their attorney have been unresponsive to lead counsel's request for information; or (4) their
22 purchases occurred in states for which Class Plaintiffs are no longer asserting claims. *See* ECF
23 No. 846 at 7:14-16. Concurrently, Indirect Purchaser Plaintiffs moved to substitute in two new
24 named plaintiffs, indicating that these plaintiffs purchased "a Sharper Image Brand literati Ereader
25 with a built-in lithium ion battery" and "a finished product containing a lithium ion battery." *Id.* at
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1 and that the deadline for Defendants to file their oppositions to those motions be extended by 30
2 days beyond the amount of time they are presently allotted. Under the parties' joint proposal, the
3 schedule would be revised as follows:

4	EVENT	PRESENT DEADLINE	PROPOSED DEADLINE
5	Plaintiffs' class certification motions	November 30, 2015	January 15, 2016
6	Defendants' oppositions to class certification and Daubert motions	March 9, 2016	May 24, 2016
7	Plaintiffs' replies on class certification and oppositions to Daubert motions	June 7, 2016	August 22, 2016
8	Defendants' replies to Daubert oppositions	July 22, 2016	October 6, 2016

11 The parties have not previously requested an extension of the class certification briefing schedule.

1 DATED: September 25, 2015

2 LIEFF CABRASER HEIMANN &
3 BERNSTEIN, LLP

4 By /s/ Brendan P. Glackin
BRENDAN P. GLACKIN

5 Eric B. Fastiff (SBN 182260)
6 Elizabeth J. Cabraser (SBN 83151)
7 Richard M. Heimann (SBN 63607)
8 Joy A. Kruse (SBN 142799)
9 Marc A. Pilotin (SBN 266369)
10 Lin Y. Chan (SBN 255027)
11 275 Battery Street, 29th Floor
12 San Francisco, CA 94111-3339
13 Telephone: (415) 956-1000
14 Facsimile: (415) 956-1008
15 ecabraser@lchb.com
16 rheimann@lchb.com
17 efastiff@lchb.com
18 jakruse@lchb.com
19 bglackin@lchb.com
20 mpilotin@lchb.com
21 lchan@lchb.com

22 HAGENS BERMAN SOBOL SHAPIRO LLP

23 By /s/ Shana E. Scarlett
SHANA E. SCARLETT

24 Jeff D. Friedman (SBN 173886)
25 715 Hearst Avenue, Suite 202
26 Berkeley, CA 94710
27 Telephone: (510) 725-3000
28 Facsimile: (510) 725-3001
jefff@hbsslslaw.com
shanas@hbsslslaw.com

29 Steve W. Berman (*pro hac vice*)
30 HAGENS BERMAN SOBOL SHAPIRO LLP
31 1918 Eighth Avenue, Suite 3300
32 Seattle, WA 98101
33 Telephone: (206) 623-7292
34 Facsimile: (206) 623-0594
35 steve@hbsslslaw.com

PEARSON, SIMON & WARSHAW, LLP

By /s/ Aaron M. Sheanin
AARON M. SHEANIN

Bruce L. Simon (SBN 96241)
Robert G. Retana (SBN 148677)
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswplaw.com
asheanin@pswplaw.com
rretana@pswplaw.com

SAVERI & SAVERI, INC.

By /s/ R. Alexander Saveri
R. ALEXANDER SAVERI

Geoffrey C. Rushing (SBN 126910)
Carl N. Hammarskjold (SBN 280961)
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
rick@saveri.com
grushing@saveri.com
carl@saveri.com

BERMAN DEVALERIO

By /s/ Todd A. Seaver
TODD A. SEAVER

Joseph J. Tabacco, Jr. (SBN 75484)
Jessica Moy (SBN 272941)
One California Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
jtabacco@bermandevalerio.com
tseaver@bermandevalerio.com
jmoy@bermandevalerio.com

***Co-Lead Counsel for Direct Purchaser
Plaintiffs***

1 COTCHETT, PITRE & McCARTHY, LLP

2 By /s/ Steven N. Williams
3 STEVEN N. WILLIAMS

4 Joseph W. Cotchett (SBN 36324)
5 Nancy L. Fineman (SBN 124870)
6 840 Malcolm Road
7 Burlingame, CA 94010
8 Telephone: (650) 697-6000
9 Facsimile: (650) 697-0577
10 jcotchett@cpmlegal.com
11 nfineman@cpmlegal.com
12 swilliams@cpmlegal.com

13 ***Co-Lead Counsel for Indirect Purchaser***
14 ***Plaintiffs***

15 WINSTON & STRAWN LLP

16 By /s/ Jeffrey L. Kessler
17 JEFFREY L. KESSLER

18 A. Paul Victor (*pro hac vice*)
19 Eva W. Cole (*pro hac vice*)
20 Jeffrey J. Amato (*pro hac vice*)
21 Erica C. Smilevski (*pro hac vice*)
22 200 Park Avenue
23 New York, NY 10166-4193
24 Telephone: (212) 294-4601
25 Facsimile: (212) 294-4700
26 jkessler@winston.com
27 pvictor@winston.com
28 ewcole@winston.com
jamato@winston.com
esmilevski@winston.com

29 Ian L. Papendick (SBN 275648)
30 WINSTON & STRAWN LLP
31 101 California Street
32 San Francisco, CA 94111
33 Telephone: (415) 591-6904
34 Facsimile: (415) 591-1400
35 ipapendick@winston.com

36 Roxann E. Henry (*pro hac vice*)
37 MORRISON & FOERSTER LLP
38 2000 Pennsylvania Avenue, NW

AKIN GUMP STRAUSS HAUER & FELD
LLP

By /s/ Reginald Steer
REGINALD STEER

Mollie McGowan Lemberg (SBN 296452)
580 California Street, Suite 1500
San Francisco, California 94104-1036
Telephone: (415) 765-9500
Facsimile: (415) 765-9501
rsteer@akingump.com
mmcgowanlemborg@akingump.com

Hyongsoon Kim (SBN 257019)
AKIN GUMP STRAUSS HAUER & FELD
LLP
2029 Century Park East, Suite 2400
Los Angeles, California 90067-3010
Telephone: (310) 229-1000
Facsimile: (310) 229-1001
kimh@akingump.com

Catherine Creely
AKIN GUMP STRAUSS HAUER & FELD
LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
ccreely@akingump.com

Counsel for LG Chem, Ltd. and
LG Chem America, Inc.

SHEPPARD MULLIN RICHTER &
HAMPTON

By /s/ Gary L. Halling
GARY L. HALLING

James L. McGinnis
Michael W. Scarborough
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
Telephone: (415) 774-3294
Facsimile: (415) 434-3947
ghalling@sheppardmullin.com
jmcginnis@sheppardmullin.com
mscarborough@sheppardmullin.com

Counsel for Samsung SDI Co., Ltd., and

Suite 6000
Washington, DC 20006
Telephone: (202) 887-1500
Facsimile: (202) 887-0763
rhenry@mofo.com

***Counsel for Panasonic Corporation,
Panasonic Corporation of North America,
SANYO Electric Co., Ltd., and
SANYO North America Corporation***

VINSON & ELKINS LLP

By /s/ Craig P. Seebald
CRAIG P. SEEBALD

Jason A. Levine (*pro hac vice*)
Lindsey R. Vaala (*pro hac vice*)
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, D.C. 20037
Telephone: (202) 639-6585
Facsimile: (202) 879-8995
cseebald@velaw.com
jlevine@velaw.com
lvaala@velaw.com

Matthew J. Jacobs (SBN 171149)
VINSON & ELKINS LLP
525 Market Street, Suite 2750
San Francisco, California 94105
Telephone: (415) 979-6990
Facsimile: (415) 651-8786
mjacobs@velaw.com

***Counsel for Maxell Corporation of America
and Hitachi Maxell, Ltd.***

WHITE & CASE LLP

By /s/ J. Frank Hogue
J. FRANK HOGUE

Christopher M. Curran (*pro hac vice*)
J. Frank Hogue (*pro hac vice*)
701 Thirteenth Street, NW
Washington, DC 20005
Telephone: (202) 626-3600

Samsung SDI America, Inc.

WINSTON & STRAWN LLP

By /s/ Robert B. Pringle
ROBERT B. PRINGLE

Paul R. Griffin (SBN 083541)
Sean D. Meenan (SBN 260466)
101 California Street
San Francisco, CA 94111-5802
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
rpringle@winston.com
pgriffin@winston.com
smeen@winston.com

Counsel for NEC Corporation

GIBSON, DUNN & CRUTCHER LLP

By /s/ George A. Nicoud III
GEORGE A. NICLOUD III

George A. Nicoud III (SBN 106111)
G. Charles Nierlich (SBN 196611)
Robert E. Kim (SBN 264932)
Angela Y. Poon (SBN 273106)
555 Mission Street
San Francisco, CA 94105-0921
Telephone: (415) 393-8200
Facsimile: (415) 393-8306
tnicoud@gibsondunn.com
gnierlich@gibsondunn.com
rkim@gibsondunn.com
apoon@gibsondunn.com

Counsel for NEC TOKIN Corporation

COOLEY LLP

By /s/ John C. Dwyer
JOHN C. DWYER

Stephen C. Neal (SBN 170085)
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5228

1 Facsimile: (202) 639-9355
ccurran@whitecase.com
2 fhogue@whitecase.com

3 *Counsel for Toshiba*
4 *Corporation*

Facsimile: (650) 849-7400
dwyerjc@cooley.com
nealsc@cooley.com
bennett.miller@cooley.com

Beatriz Mejia (SBN 190948)
Matthew M. Brown (SBN 264817)
COOLEY LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222
mejiab@cooley.com
mmbrown@cooley.com

*Counsel for Sony Corporation, Sony Energy
Devices Corporation, and Sony Electronics,
Inc.*

11
12
13 I attest that concurrence in the filing of the document has been obtained from each of the
14 other signatories above.

15 September 25, 2015

By /s/ Aaron M. Sheanin
AARON M. SHEANIN